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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,797	05/12/2005	Michael Roreger	512100-2047	9006

7590 10/20/2009
Frommer Lawrence & Haug
745 Fifth Avenue
New York, NY 10151

EXAMINER

HWU, DAVIS D

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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10/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,797	Applicant(s) ROREGER ET AL.	
	Examiner Davis Hwu	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-14 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-14 and 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. Applicant's amendment and arguments of August 29, 2009 have been entered and have been fully considered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1, 4-14, and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul.

Paul discloses a dispenser for controlled release of volatile substances comprising: a reservoir that is flat and has a top face and a bottom face and which is covered on its top face with a layer of material 22 impermeable to the volatile substances and covered on its bottom face by a first control element 55, the reservoir containing at least one volatile substance, the first control element is composed of a material which is permeable to the at least one volatile substance, and which exerts control over the release rate of the volatile substance by means of diffusion as recited; and a second control element 23 composed of a material which is impermeable to the volatile substance and which exerts control over the release rate of the volatile substance by controlling the size of the surface of the first control element independent of the physical properties of the volatile substance as recited (see Figure 6) wherein the second element is in the form of a film that possess gaps 52, and wherein the first control element is pressure-sensitively adhesive and fully covered by the second control element such that during use, the volatile substance moves from the reservoir first

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through the first control element and then through the second control element after removal of the flap 51. The number of gaps as recited would have been a matter of design choice, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. The thickness and shapes as recited in claims 6, 11 and 12 would have been matters of design choice since such a modification involves a mere change in the size or shape of a component which is generally recognized as being within the level of ordinary skill in the art. The duration as recited in claim 17 would also have been a matter of design choice depending on the material used, and the limitations of claims 18-22 would all have been matters of design choice regarding types of materials and material weight.

Response to Arguments

4. Applicant's arguments filed August 28, 2009 have been fully considered but they are not persuasive. The device of Paul comprises the first control element and the second control element as recited in which the volatile substance flows through permeable first control element 55 and then through the opening of the second control element 23, thus forming a joint action between the two elements. As the tab 51 is pulled back, more of the surface of the element 23 is exposed thus controlling the size of the surface of the first control element that discharges the volatile substance, therefore meeting the claim limitation of "controlling the size of the surface of the first control element." Since the second control element of Paul carries out the same function of the instant invention, the material of the second control element would have

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been a matter of design choice as stated above. By pulling back the tab 51 of Paul, the second control element is uncovered to allow escape of the volatile substance.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is (571)272-4904. The examiner can normally be reached on Mon-Friday 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Davis Hwu/
Primary Examiner, Art Unit 3752